

IN THE MATTER OF	*	BEFORE THE
	*	HOWARD COUNTY
STEPHEN AND LAURA HANSGEN	*	BOARD OF APPEALS
Petitioners	*	BA Case No. 708-D
	*	

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### **DECISION AND ORDER**

The Howard County Board of Appeals (the "Board") convened on December 10, 2015 to deliberate and reach a decision regarding the petition of Stephen and Laura Hansgen, for confirmation of a nonconforming use for one shipping container, as authorized under Section 129.0. of the Howard County Zoning Regulations. The Board also held a hearing in this matter on April 30, 2015.

Members of the Board present at the April 30, 2015 hearing and December 10, 2015 worksession were: James Howard, Genevieve Walker-Lightfoot, James Walsh and John Lederer. Chairperson James Howard presided at both the hearing and worksession. Board member Steven Hunt was absent from the April 30, 2015 hearing; however, he certified that he reviewed all the evidence submitted and listened to a recording of the hearing for which he was not present prior to participating at the December 10, 2015 worksession.

The Petitioners provided certification that the notice of the hearing was advertised and that the property was posted as required by the Howard County Code. All Board members certified that they had viewed the Property as required by the Zoning Regulations.

The case was a *de novo* appeal from the decision rendered by the Director of the Department of Planning and Zoning (NCU Case No. 14-004) denying the petition of Stephen and Laura Hansgen, for confirmation of a nonconforming use for one shipping container.

The case was heard pursuant to the Board's Rules of Procedure, Section 2.209. The burden of proof is one of a preponderance of the evidence and is on the Petitioners to show, by competent, material and substantial evidence, that Petitioners are entitled to the relief requested and that the request meets all prescribed standards and requirements of the applicable Zoning Regulations.

The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations 1948, 1954, 1961, 1977, 1985, 1993, 2004 and 2013 Howard County Zoning Regulations, The Department of Planning and Zoning NCU Case No. 14-004, including the aerial photograph records of the Department of Planning and Zoning, and the Nonconforming Use Confirmation Petition and Plan were incorporated into the record by reference prior to the introduction of testimony.

Laura Hansgen and Brad Kay testified in support of the petition.

#### **FINDINGS OF FACT**

1. Stephen and Laura Hansgen, (Petitioners), are the owners of the subject property of this proceeding. The subject property is located on the north side of Frederick Road about 65 feet east of Hopkins Alley. This property is identified as Tax Map 7, Grid 12, Parcel 148 and the address is 15912 Frederick Road (the "Property"). The Property is located in the B-1 zoning district and is approximately .43 acres in size.

2. The principal use on the Property is a single-family detached dwelling located approximately 30 feet from the Frederick Road public right-of-way. To the west of the house is

a gravel driveway and to the north of this driveway and to the northwest of the house is a shipping container measuring 8 feet by 40 feet. The Petitioners' petition states that there were two shipping containers on the Property when the Property was purchased in June 2004 and at the request of Howard County, one container was removed from the Property. The Petitioners request confirmation of a nonconforming use for the remaining shipping container on the Property.

3. All adjoining properties on the north side of Frederick Road are similarly zoned B-1. The property to the north is Parcel 214, which is improved with a single-family detached dwelling that fronts on North Avenue. Adjoining the east side of the Property is Parcel 245, which is improved with a single-family detached dwelling that fronts on Frederick Road. Across Frederick Road to the south of the Property is Parcel 241, which is zoned RC-DEO and is the site of an elementary school. Adjoining the west side of the Property is Parcel 268, which is improved with a relatively large commercial building which has access to Hopkins Alley.

4. Laura Hansgen testified in support of her petition. Ms. Hansgen presented a power-point presentation which gave an overview of the Lisbon area and the presence of shipping containers and trailers in the area. Ms. Hansgen asserted that the previous owner had placed the shipping container on the Property in 1997 and that she purchased the Property in 2004. Ms. Hansgen said that the 40-foot shipping container has been where it is now for 18 years. Ms. Hansgen stated that it was currently used for storage but hoped to use it as an art studio in the future. Ms. Hansgen said that keeping the one container on her Property would not affect the surrounding area because of the prevalence of them within the area.

5. Brad Kay testified in support of the Ms. Hansgen's petition and in particular her progressive plan to convert the storage container into an art studio.



6. Section 129.0.A. of the Zoning Regulations states in pertinent part, “A nonconforming use is any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, either on the effective date of these regulations or as a result of any subsequent amendment thereto.”

7. Section 129.0.D.1. of the Zoning Regulations permits the Director of Planning and Zoning to confirm the existence of a nonconforming use upon review of a petition filed by the property owner which contains the following items:

- a. A statement and plans or other illustrations fully describing the magnitude and extent of the nonconforming use.
- b. A statement identifying the date the use became nonconforming to the use provisions of the Zoning Regulations.
- c. Documentation substantiating the existence of the use on the date it became nonconforming and clearly demonstrating the continued and uninterrupted use or operation thereof from the specified date to the time of filing the application.

8. Section 101.0.O. of the Zoning Regulations Rules of Construction states that “All uses are prohibited unless specifically enumerated as a use permitted as a matter of right or as an accessory use in the various districts as provided by these regulations.”

9. In the 1993, 2004 and the 2013 Zoning Regulations, shipping containers for storage purposes are not permitted by right in the B-1 District and they are not specifically permitted as accessory uses. The 2004 (Section 103) and 2013 Zoning Regulations (Section 103.0) state that “cargo containers may not be used as a shelter for on-site storage.”

10. The DPZ 2004 aerial photograph depicts the shipping container on the Property while the DPZ 2002 aerial photograph does not. DPZ Director found that this means the shipping

container must have been placed on the Property at some point between 2002 and 2004. The Zoning Regulations which would have been effective during this period could have been the 1993 Zoning Regulations, as amended, or the 2004 Zoning Regulations.

### **ANALYSIS**

The Petitioners bear the burden to demonstrate by a preponderance of the evidence that their petition for confirmation of a nonconforming use for one shipping container would satisfy the applicable Zoning Regulations. A lawful non-conforming use is established if a property owner can demonstrate that before, and at the time of the adoption of a new zoning ordinance, the property was then being used in a lawful manner for the use that, by later legislation became non-permitted. Petitioners were unable to establish when the shipping container on the Property became a nonconforming use and that the shipping container was ever a permissible lawful use on the Property.

### **CONCLUSIONS OF LAW**

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard, the Board concludes that the instant petition fails to comply with the applicable Zoning Regulations.

### **COMMENT**


The Board comments that it delayed the issuance of its Decision and Order in this case to afford Petitioners the opportunity to explore other possible avenues to bring the subject property into compliance with the current Zoning Regulations.

**ORDER**

Based upon the foregoing, it is this 26<sup>th</sup> day of January, 2017, by the Howard County Board of Appeals, **ORDERED**, that the Petition of Stephen and Laura Hansgen, for confirmation of a nonconforming use for one shipping container is **DENIED**.

**ATTEST:**

**HOWARD COUNTY BOARD  
OF APPEALS**

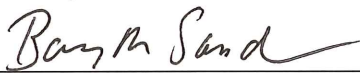
  
Allison Mathieson, Board Secretary


  
James Howard, Chairperson


  
Genevieve Walker-Lightfoot, Vice Chairperson


**PREPARED BY:  
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Steven Hunt

I hereby certify that I reviewed the evidence submitted and listened to a recording of the April 30, 2015 hearing for which I was not present.

  
Steven Hunt